

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE AARON ANDRYS,

No. C 12-084 SI (pr)

Plaintiff,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

v.

R. GROUNDS, Warden; et al.,

Defendants.

INTRODUCTION

Jesse Aaron Andrys, formerly an inmate at the Correctional Training Facility in Soledad, filed a *pro se* civil rights action under 42 U.S.C. § 1983. In his complaint, he alleges that prison staff committed an equal protection violation by ejecting non-Mexicans from a canteen area and failed to properly handle his inmate appeal about the issue. His complaint is now before the court for review under 28 U.S.C. § 1915A.

DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* at 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
2 a right secured by the Constitution or laws of the United States was violated and (2) that the
3 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
4 U.S. 42, 48 (1988).

5 Plaintiff alleges in his complaint that a correctional officer required "non-Mexican
6 inmates to leave the canteen area" on April 13, 2011. Docket # 1, p. 3. He does not allege
7 whether he was present when this occurred or just was irritated upon later learning of the
8 incident. Federal courts have the power and the duty to raise the issue of standing sua sponte
9 and to dismiss the action if standing is wanting. *Bernhardt v. County of Los Angeles*, 279 F.3d
10 862, 868 (9th Cir. 2002). The standing requirement derives from Article III, Section 2 of the
11 United States Constitution, which restricts adjudication in federal courts to "Cases" and
12 "Controversies." *See Valley Forge Christian College v. Americans United for Separation of*
13 *Church and State, Inc.*, 454 U.S. 464, 471 (1982). Lack of Article III standing requires dismissal
14 for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Maya v.*
15 *Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. Sept. 2011). Article III standing is present only
16 when (1) a plaintiff suffers a concrete, particularized injury which is actual or imminent; (2)
17 there is a causal connection between the injury and the conduct complained of; and (3) the injury
18 will likely be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S.
19 555, 560-61 (1992). Plaintiff must amend his complaint to allege whether he was present at the
20 canteen and was among those inmates required to leave so that it can be determined whether he
21 has standing to pursue his equal protection claim.

22 Plaintiff's other claim is that prison officials did not properly handle his inmate appeal and
23 did not give him the relief he sought (including, apparently an investigation of staff misconduct
24 and a determination of staff misconduct). There is no federal constitutional right to a prison
25 administrative appeal or grievance system for California inmates. *See Mann v. Adams*, 855 F.2d
26 639, 640 (9th Cir. 1988); *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996). The denial
27 of an inmate appeal is not so severe a change in condition as to implicate the Due Process Clause
28 itself and the State of California has not created a protected interest in an administrative appeal


1 system in its prison. California Code of Regulations, title 15 sections 1073 and 3084.1 grant
2 prisoners a purely procedural right: the right to have a prison appeal. The regulations simply
3 require the establishment of a procedural structure for reviewing prisoner complaints and set
4 forth no substantive standards; instead, they provide for flexible appeal time limits, *see* Cal.
5 Code Regs. tit. 15, § 3084.6, and, at most, that "no reprisal shall be taken against an inmate or
6 parolee for filing an appeal," *id.* § 3084.1(d). A provision that merely provides procedural
7 requirements, even if mandatory, cannot form the basis of a constitutionally cognizable liberty
8 interest. *See Smith v. Noonan*, 992 F.2d 987, 989 (9th Cir. 1993); *see also Antonelli*, 81 F.3d at
9 1430 (prison grievance procedure is procedural right that does not give rise to protected liberty
10 interest requiring procedural protections of Due Process Clause). Andrys had no federal
11 constitutional right to a properly functioning appeal system. An incorrect decision on an
12 administrative appeal or failure to process the appeal in a particular way therefore did not
13 amount to a violation of his right to due process. The administrative appeal claim is dismissed
14 for failure to state a claim upon which relief may be granted.

16 CONCLUSION

17 For the foregoing reasons, the complaint is dismissed with leave to amend. The amended
18 complaint must be filed no later than **June 15, 2012**, and must include the caption and civil case
19 number used in this order and the words AMENDED COMPLAINT on the first page. Plaintiff
20 is cautioned that his amended complaint must be a complete statement of his claims and will
21 supersede existing pleadings. *See London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
22 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are not
23 alleged in the amended complaint.") Failure to file the amended complaint by the deadline will
24 result in the dismissal of the action.

25 IT IS SO ORDERED.

26 Dated: May 19, 2012

27 
28 SUSAN ILLSTON
United States District Judge